

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)	Chapter 11
)	
EARTH FARE, INC., <i>et al.</i> ¹)	Case No. 20-10256 (KBO)
)	
Debtors.)	Jointly Administered
)	
)	Ref. Docket Nos. 33, 58, 62, 70, 122, 303

**CERTIFICATION OF COUNSEL REGARDING SUPPLEMENTAL ORDER (A)
AUTHORIZING THE SALE OF CERTAIN OF THE DEBTORS' REMAINING ASSETS
FREE AND CLEAR OF ALL ENCUMBRANCES, (B) APPROVING ASSET PURCHASE
AGREEMENT, (C) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT
OF CERTAIN UNEXPIRED LEASES, AND (D) WAIVING STAY PROVISIONS
PURSUANT TO BANKRUPTCY RULES 6004(H) AND 6006(D)
[WINN-DIXIE STORES, INC.]**

In accordance with that certain order dated February 14, 2020 [Docket No. 122] (the “**Bidding Procedures/De Minimis Asset Sale Order**”),² on March 24, 2020, the Court held a hearing (the “**Hearing**”) to consider approval of the Debtors’ proposed sale and assignment of certain Assets to Winn-Dixie Stores, Inc.(the “**Buyer**”). Consistent with the statements of the parties and the Court at the Hearing, on March 25, 2020, the Court entered an order [Docket No. 303] (the “**Sale Order**”) approving the Debtors’ entry into that certain Assumption and Assignment of Lease Agreement, dated March 20, 2020, with ALDI Inc. (the “**Purchase Agreement**”).

As noted at the Hearing, the Debtors were in the process of negotiating that certain *First Addendum to Asset Purchase and Assumption and Assignment of Leases Agreement*

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Earth Fare, Inc. (3936) and EF Investment Holdings, Inc. (8084). The mailing address for each of the Debtors is 220 Continuum Drive, Fletcher, North Carolina 28732.

² Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Bidding Procedures/De Minimis Asset Order.

(the “**Addendum**”), whereby the buyer would also acquire that certain lease, dated December 16, 2015, with PGP Jacksonville, LLC, with respect to property located at the Mandarin South Shopping Center, 11700 San Jose Boulevard, Jacksonville, Florida (the “**Mandarin Lease**”), as well as the property of the Debtors within the premises covered by the Mandarin Lease.

The Debtors and Buyer have finalized that Addendum and obtained consent from the Landlord under the Mandarin Lease to the assumption and assignment of the Mandarin Lease under the terms of the proposed order attached hereto as Exhibit 1 (the “**Supplemental Order**”).

WHEREFORE, the Debtors respectfully request that the Court enter the Supplemental Order without further notice or hearing at the Court’s earliest convenience.

Dated: March 26, 2020
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Sean T. Greecher
Pauline K. Morgan (No. 3650)
M. Blake Cleary (No. 3614)
Sean T. Greecher (No. 4484)
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Counsel to the Debtors and Debtors in Possession

EXHIBIT 1

Supplemental Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)
) Chapter 11
)
EARTH FARE, INC., <i>et al.</i> ¹) Case No. 20-10256 (KBO)
)
Debtors.) (Jointly Administered)
)
) Docket Ref. Nos. 303 and ____
)
)

**SUPPLEMENTAL ORDER (A) AUTHORIZING THE SALE OF CERTAIN
OF THE DEBTORS' REMAINING ASSETS FREE AND CLEAR
OF ALL ENCUMBRANCES, (B) APPROVING ASSET PURCHASE
AGREEMENT, (C) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT
OF CERTAIN UNEXPIRED LEASES, AND (D) WAIVING STAY PROVISIONS
PURSUANT TO BANKRUPTCY RULES 6004(h) AND 6006(d)**

Upon the motion (the “**Motion**”)² of the above-captioned debtors and debtors-in-possession (the “**Debtors**”) for an order, under sections 105, 363, and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, and 6006, and Local Rules 2002-1 and 6004-1, authorizing and approving, among other things, the sale (the “**Sale**”) of the Leases and the Purchased Assets (together, the “**Acquired Assets**”); and the Court having entered an order on March 25, 2020 [Docket No. 303] (the “**Initial Order**”): (a) authorizing and approving the Debtors’ entry into that certain *Asset Purchase Agreement and Assumption and Assignment of Leases Agreement* (the “**Purchase Agreement**”) with Winn-Dixie Stores, Inc. (the “**Buyer**”), (b) authorizing and approving the assumption and assignment of the Leases set forth on Exhibit A to the Purchase Agreement in connection therewith (the “**Assumed Leases**”); and (c) waiving the stay provisions

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² Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Purchase Agreement (as defined herein) or, if not defined in the Purchase Agreement, in the Motion. If there is a conflict between terms defined in the Motion and the Purchase Agreement, the Purchase Agreement shall control.

of Bankruptcy Rules 6004(h) and 6006(d) in accordance therewith; and the Court having conducted a hearing on the Motion on March 24, 2020 (the “**Sale Hearing**”) at which time the Debtors advised that the parties were engaged in discussions regarding a potential addendum to the Purchase Agreement whereby a further Lease would be included in the listing of Assumed Leases; and the parties having entered into the *First Addendum to Asset Purchase and Assumption and Assignment of Leases Agreement* as attached hereto as EXHIBIT A (the “**Addendum**”); and it appearing that the legal and factual bases set forth in the Motion and at the Sale Hearing establish just cause for the relief granted herein, and that good and sufficient cause appearing therefor;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. The Debtors shall be authorized to enter into the Addendum, which upon the Closing Date shall be incorporated into the Purchase Agreement.
2. The Debtors shall be authorized to assume and assign to the Buyer, free and clear of all Encumbrances as described in the Initial Order, that certain lease, dated December 16, 2015, with PGP Jacksonville, LLC, with respect to property located at the Mandarin South Shopping Center, 11700 San Jose Boulevard, Jacksonville, Florida (the “**Mandarin Lease**”). The Mandarin Lease shall be considered an Assumed Lease (as defined in the Initial Order), and the property of the Debtors within the premises covered by the Mandarin Lease shall constitute Acquired Assets (as defined in the Initial Order) upon the Closing Date.
3. Except as otherwise set forth in this Order, nothing in this Order is intended or shall be deemed to amend, modify or otherwise affect the Initial Order, and the Initial Order shall remain in full force and effect. The rights and obligations of the parties with respect to the

Mandarin Lease and related Acquired Assets shall be governed by the terms of the Initial Order as though set forth fully herein.

4. Notwithstanding any applicability of any Bankruptcy Rules, the terms of this Order shall be effective and enforceable immediately upon its entry.

5. This Court shall retain jurisdiction over any and all matters arising from or related to the interpretation or implementation of this order.

EXHIBIT A

Addendum

FIRST ADDENDUM
TO
ASSET PURCHASE AND
ASSUMPTION AND ASSIGNMENT OF LEASES AGREEMENT

THIS FIRST ADDENDUM TO ASSET PURCHASE AND ASSUMPTION AND ASSIGNMENT OF LEASES AGREEMENT (this “Addendum”) is made this _____ day of _____, 2020, by and among Earth Fare, Inc., a Delaware corporation (“Seller”), and WINN-DIXIE STORES, INC., a Florida corporation (“Buyer”).

WHEREAS, the Parties entered into that certain Asset Purchase and Assumption and Assignment of Leases Agreement dated March __, 2020 (the “APA”);

WHEREAS, pursuant to the APA, Buyer agreed, subject to all of the other terms and conditions of the APA, to purchase the Store Properties and Purchased Assets set forth on Exhibit A and Exhibit B thereto;

WHEREAS, the Parties mutually desire to modify the terms of the APA to add an additional Store Property (the “Mandarin Store”) and associated additional Purchased Assets (the “Mandarin Purchased Assets”), upon the terms and conditions set forth herein; and

WHEREAS, the Parties, together with the landlord of the Mandarin Store (the “Mandarin Landlord”), have agreed to the terms and conditions set forth in Section 4 below.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Recitals. The foregoing recitals are true and correct and are hereby incorporated into this Addendum.
2. Defined Terms. All capitalized terms not otherwise defined in this Addendum shall have the definitions contained in the APA.
3. Addition of Mandarin Store.

(a) Seller, a debtor in possession, is the tenant under the Lease described below for the Mandarin Store at the premises more particularly described in such Lease, which shall now also constitute a Store Property under the APA:

Landlord Name	Store Property	Store Number	Lease Date
PGP Jacksonville, LLC	Mandarin South Shopping Center 11700 San Jose Blvd. Jacksonville, FL 32223	557	December 16, 2015

(b) The Mandarin Purchased Assets are set forth on Exhibit 1 hereto, and shall now constitute part of the Purchased Assets under the APA.

(c) The Purchase Price under the APA is hereby increased by \$300,000, which shall constitute the Allocated Store Amount for the Mandarin Store.

(d) The Lease Cure Amount for the Mandarin Store shall be as follows:

Landlord Name	Store Property	Store Number	Cure Reserve
PGP LLC Jacksonville, FL	Mandarin South Shopping Center 11700 San Jose Blvd. Jacksonville, FL 32223	557	\$149,937.96

4. Agreements with the Mandarin Landlord.

(a) Rent Commencement. Upon becoming the Tenant under the Lease for the Mandarin Store pursuant to the APA, Buyer shall commence paying rent and all other amounts due by Tenant under the Lease effective as of April 1, 2020.

(b) Access. Commencing on the date of this Addendum, Seller and the Mandarin Landlord each hereby grant Buyer a license to enter in and upon the premises of Mandarin Store (including all improvements located thereon) at all reasonable times for the purpose of conducting the inspections contemplated by this Section 4, at Buyer's sole cost and expense. Buyer shall not permit or allow any mechanics' or materialmans' lien of any kind related to such inspections or work or the access granted hereunder to be placed upon or enforced against the Mandarin Store. Buyer agrees that it shall cause its consultants, contractors and any sub-contractors performing the inspections or work to obtain and maintain (i) general comprehensive liability insurance, (ii) automobile liability insurance, and (iii) Engineer's Professional Liability Insurance (covering performance of environmental services), all in an amount not less than two million dollars (\$2,000,000) per occurrence and in the aggregate, with endorsements, upon terms, and from insurers acceptable to Seller, and such insurance policies shall name Seller as additional insured. Buyer agrees to (i) defend, indemnify and hold harmless Seller and the Mandarin Landlord against and from any claim or liability imposed or sought to be imposed upon Seller or Mandarin Landlord as a result of actions by Buyer, its employees, contractors, representatives, or other agents on the premises of the Mandarin Store (including the improvements located thereon); (ii) not damage or harm the premises of the Mandarin Store (including the improvements located thereon); and (iii) repair any damage to the Mandarin Store (including the improvements located thereon) caused by Buyer its employees, contractors, representatives, or other agents.

(c) Assessment and Remediation. Buyer will contract with Universal Engineering Sciences for the purpose of conducting an assessment of potential vapor intrusion at the Mandarin Store. This assessment will be non-intrusive and will include the collection of a single indoor air sample from the northeast corner of the building. The indoor air sample will be collected using a TO-15 Suma Canister, which will then be analyzed to determine the presence of various volatile organic compounds. The Mandarin Landlord will cooperate to ensure that the Mandarin Store HVAC system is operating under normal conditions for the 24-hour period preceding the sample collection. This assessment shall be completed prior to April 21, 2020. In the event there is vapor intrusion that requires remediation, the Mandarin Landlord will undertake necessary remediation and rent will abate under the Mandarin Store Lease during such remediation for a period not to exceed 120 days.

(d) Modifications to the Mandarin Store. In the event Buyer trenches the slab at the Mandarin Store to run its refrigeration lines or for any other purpose, any penetrations to the slab will be properly sealed by Buyer in accordance with applicable building codes.

5. No Other Modification. Except as expressly modified herein, the APA remains in full force and effect with no amendments or other modification.

6. Counterparts. This Addendum may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original for all purposes, and all such counterparts shall together constitute but one and the same instrument. A signed copy of this Addendum delivered by either facsimile or e-mail shall be deemed to have the same legal effect as delivery of an original signed copy of this Addendum.

7. Entire Agreement. This Addendum, including any exhibits or schedules attached hereto, and the APA constitute the entire agreement between the Parties concerning the matter hereof, and supersedes all prior and contemporaneous understandings, memoranda, correspondence, conversations, negotiations and agreements, with respect to the subject matter hereof.

Signatures follow on the next page.

IN WITNESS WHEREOF, this Agreement has been duly executed this _____
day of 26th, 2020

SELLER: Earth Fare, Inc., Debtor-in-Possession

By: Chuck Goss
Name: Chuck Goss
Title: CEO

BUYER: WINN-DIXIE STORES, INC.
a Florida corporation

By: Brian P. Carney
Brian P. Carney

Executive Vice President

JOINDER

The undersigned, as Landlord of the Mandarin Store, hereby joins in, consents to, and agrees to be bound by the terms and conditions set forth in Section 4 of this Addendum.

PGP JACKSONVILLE, LLC,
a Delaware limited liability company

PGP FLORIDA HOLDINGS, LLC
a Delaware limited liability company
Its Sole and Managing Member

PREFERRED GROWTH PROPERTIES,
LLC, a Delaware limited liability company
Its Sole Member

By: BOOKS-A-MILLION, INC.
a Delaware corporation
Its Managing Member

By: R. Tom Nisew
Name: R. Tom Nisew
Title: President & CEO